

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 08-13555-scc
4 - - - - - x
5 In the Matter of:
6 LEHMAN BROTHERS HOLDINGS, INC.,
7 Debtors.
8 - - - - - x
9 ADV. CASE NO.: 12-01044-scc
10 In the Matter of:
11 LEHMAN BROTHERS HOLDINGS, INC., ET AL.,
12 Plaintiffs,
13 v.
14 CITIBANK, N.A., ET AL.,
15 Defendants.
16 - - - - - x
17 United States Bankruptcy Court
18 One Bowling Green
19 New York, New York
20
21 March 5, 2014
22 2:05 p.m.
23 B E F O R E :
24 HON SHELLEY C. CHAPMAN
25 U.S. BANKRUPTCY JUDGE

1 DOC # 43309 Motion of Lehman Brothers Holdings, Inc.

2 Pursuant to Bankruptcy Rule 9019 for Approval of Settlement

3 Agreement Resolving Claim of Dr. H.C. Tschira Beteiligungs

4 GmbH & Co KG and Klaus Tschira Stiftung gGmbH

5

6 Doc #43315 Order to Show Cause to Consider Motion of Lehman

7 Brothers Holdings, Inc. Pursuant to Bankruptcy Rule 9019 for

8 Approval of Settlement Agreement Resolving Claim of Dr. H.C.

9 Tschira Beteiligungs GmbH & Co. KG and Klaus Tschira

10 Stiftung gGmbH signed on 2/26/2014 (related

11 document(s)43309). Hearing to be held on 3/5/2014 at 2:00

12 PM at Courtroom 621 (SCC). Objections due by 3/4/2014 at

13 12:00 PM Eastern Time

14

15 Adversary Proceeding: 12-01044-scc Lehman Brothers Holdings,

16 Inc., et al. v. CITIBANK, N.A., et al. Discovery Conference

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25 Transcribed by: Sherri L. Breach, CERT*D-397

1 A P P E A R A N C E S :

2 WEIL, GOTSHAL & MANGES, LLP

3 Attorneys for Plan Administrator

4 700 Louisiana, Suite 1600

5 Houston, Texas 77002

6

7 BY: ALFREDO R. PEREZ, ESQ.

8

9 JONES DAY

10 Attorneys for Debtors

11 222 East 41st Street

12 New York, New York 10017

13

14 BY: JAYANT W. TAMBE, ESQ.

15

16 DECHERT, LLP

17 Attorneys for the Tschira entities

18 1095 Avenue of the Americas

19 New York, New York 10036

20

21 BY: ALLAN S. BRILLIANT, ESQ.

22

23

24

25

1 MILBANK, TWEED, HADLEY & MCCLOY, LLP
2 Attorneys for Ad Hoc Group
3 One Chase Manhattan Plaza
4 New York, New York 10005
5

6 BY: ERIC K. STODOLA, ESQ.
7

8 QUINN EMANUEL
9 Attorneys for
10 51 Madison Avenue, 22nd Floor
11 New York, New York 10010
12

13 BY: ANDREW J. ROSSMAN, ESQ.
14
15
16
17
18
19
20
21
22
23
24
25

1 P R O C E E D I N G S

2 THE COURT: Good afternoon. Please have a seat.
3 How is everybody today?

4 MR. PEREZ: Good, Your Honor.

5 THE COURT: All right. I think I have a few folks
6 on the phone. Mr. Farkus from RBS; Mr. Hayek from Dechert,
7 Mr. Sanjana from Reorganization Research, Mr. Schmidt from
8 Dechert, Mr. Webster from Stutman and Mr. Zekyrgias from
9 Merrill Lynch. How are you?

10 MR. BRILLIANT: Your Honor, if I could --

11 THE COURT: Yes.

12 MR. BRILLIANT: -- make a correction?

13 THE COURT: How are you, Mr. Brilliant?

14 MR. BRILLIANT: Good. And good to see you, Your
15 Honor.

16 THE COURT: Good to see you.

17 MR. BRILLIANT: It's nice to be -- be back in your
18 courtroom.

19 THE COURT: Welcome back.

20 MR. BRILLIANT: Your Honor, Mr. Daniel Hayek is
21 joining from Geneva, Switzerland. He is with the --

22 THE COURT: I see.

23 MR. BRILLIANT: -- Kramer Dreyfus law firm --

24 THE COURT: Very good.

25 MR. BRILLIANT: -- and he's the Tschira Swiss

1 counsel.

2 THE COURT: Okay.

3 MR. BRILLIANT: Mr. Christoph Schmidt is with the
4 Bighton (ph) Burkhart firm in Frankfurt, Germany, and he's
5 the Tschira entities' German counsel.

6 THE COURT: Okay. Very good. They were listed
7 with your firm --

8 MR. BRILLIANT: Yeah. We made arrangements --

9 THE COURT: -- on my sheet.

10 MR. BRILLIANT: We made the arrangements for --
11 for them to join.

12 THE COURT: Okay. Thank you so much.

13 Okay.

14 MR. PEREZ: Good morning, Your Honor. Alfredo --
15 afternoon. Alfredo Perez on behalf of the plan
16 administrator.

17 So I'm happy to be here this afternoon to try and
18 resolve this matter. And let me give you a little bit of
19 background, some of which I'm sure the Court has heard in
20 bits and pieces, but I wanted to --

21 THE COURT: And I have read the papers, but you're
22 welcome to --

23 MR. PEREZ: Well -- and, Your Honor, these papers
24 are probably much more extensive than we would normally do
25 on a 9019 because it really involved the culmination of two

1 separate settlement --

2 THE COURT: Right.

3 MR. PEREZ: -- agreements.

4 THE COURT: Right.

5 MR. PEREZ: And we wanted to indicate to the Court
6 kind of how it was all related. That's why we put that
7 little chart in that took us a long time to figure out how
8 to put it in.

9 But just by way of background, we entered into a
10 settlement agreement with LBF in March of last year --

11 THE COURT: Right.

12 MR. PEREZ: -- almost a year ago.

13 THE COURT: Right.

14 MR. PEREZ: That was approved both in the -- in
15 our Chapter 11 and in the Chapter 15. It was approved by
16 the creditors' committee.

17 At that point in May of 2013, Tschira requested an
18 appealable order from FINMA (ph) and FINMA is, in essence,
19 the regulatory entity similar, I would imagine, to, you
20 know, like the Department of Insurance in connection with
21 our rehabs.

22 THE COURT: Right. Right.

23 MR. PEREZ: That -- and requested an appealable
24 order.

25 They issued an appealable order November 11th of

1 2013 upholding the settlement in all respects. That order
2 was subsequently appealed by Tschira and that's the basis of
3 what's in our mind, holding everything up.

4 THE COURT: Right.

5 MR. PEREZ: And the last condition that we need to
6 satisfy under the LBF settlement agreement is to have a
7 final non-appealable order from the Swiss Court. That's
8 Section 5.2(d).

9 THE COURT: Right.

10 MR. PEREZ: So in order to obtain that order, in
11 essence, unlock the benefits of the LBF settlement, we've
12 entered into a settlement with KTS that, in essence, has a
13 bunch of gives for us and has a bunch of gives for them.

14 So with respect to our -- what we get out of this
15 is we get, one, the appeal is withdrawn so that the LBF
16 agreement can go effective;

17 Two, it doesn't impact LBF's ability to contest
18 the Tschira claims in Switzerland, in Germany, in England,
19 wherever they're contesting them.

20 LBF believes that Tschira is actually a net debtor
21 to --

22 THE COURT: Right.

23 MR. PEREZ: -- the LBF estates. They have a
24 lawsuit pending in England seeking recovery of the amounts
25 they claim are due.

1 Similarly, in their co-location plan they -- which
2 is, in essence, like the plan of arrangement, they held that
3 they have no claim. Tschira has objected to that and is
4 asserting claims totaling about 664 million Swiss francs.
5 So those are kind of parallel proceedings. There's another
6 proceeding in Switzerland --

7 THE COURT: Right.

8 MR. PEREZ: -- in which they're saying we don't
9 owe anything.

10 So none of that is impacted by what we're --

11 THE COURT: Right.

12 MR. PEREZ: -- doing here.

13 THE COURT: Right.

14 MR. PEREZ: That goes forward. So in the event
15 that --

16 THE COURT: I'm looking at this through LBHI eyes
17 --

18 MR. PEREZ: Exactly.

19 THE COURT: -- correct?

20 MR. PEREZ: Correct. Absolutely, Your Honor.

21 So in the event that LBF wins and there's no
22 claim, the estate doesn't owe anything to Tschira.

23 In the event that Tschira wins, then we have this
24 tiered concept where if -- if they either win or settle
25 within the first six months, our exposure is capped at 150.

1 If they either win or settle within six to 12 months, our
2 exposure is capped at 210 on the guarantee. And if it's
3 after that amount, it's capped at 300.

4 So if they hit a home run, get a \$664 million --
5 million Swiss franc claim, our exposure would be capped at
6 300.

7 We then -- so that's, in essence, what we get out
8 of this. What do they get?

9 Number one, they get --

10 THE COURT: Well, we get -- we, LBHI, we then get
11 the claims that LBF could assert against other Lehman
12 entities, right? That's the --

13 MR. PEREZ: Absolutely.

14 THE COURT: -- \$9.2 billion. So we get that,
15 right?

16 MR. PEREZ: Yes. But that's under the LBF
17 settlement. Correct.

18 THE COURT: Right.

19 MR. PEREZ: Right.

20 THE COURT: But it unlocks that.

21 MR. PEREZ: It unlocks that. It unlocks the
22 assignment of those receivables to us.

23 THE COURT: Right.

24 MR. PEREZ: And it also unlocks \$700 million of
25 current reserves --

1 THE COURT: Right.

2 MR. PEREZ: -- that we have because LBF, just on
3 the LBHI claim, we have a \$3 billion reserve.

4 THE COURT: Right.

5 MR. PEREZ: And then there -- they have reserves
6 on other claims --

7 THE COURT: Okay.

8 MR. PEREZ: -- as well that we would get.

9 THE COURT: Okay.

10 MR. PEREZ: So not only -- it's actually about 1.1
11 billion. There's about 1.3 billion that they've recovered,
12 but pursuant to the LBF settlement agreement, because the
13 Hong Kong hasn't been done yet, there's -- they -- there's
14 an indemnity that has to be collateralized up to \$125
15 million. So it's 1.1 coming from them and then 700 coming
16 from us that we already have, but are holding on account of
17 reserves that have been established pursuant to court order.

18 THE COURT: Okay.

19 MR. PEREZ: All right.

20 And so, in essence, what are we giving up for
21 that?

22 Number one, we're reinstating their guarantee that
23 they gave up.

24 THE COURT: Right.

25 MR. PEREZ: Two, we are agreeing that if they get

1 a claim we will, in essence, advance 12.5 million Swiss
2 francs not in -- as an additional amount, but initially to
3 cover their costs and expenses. And then if ultimately they
4 end up not getting 100 cents on the dollar, we agree that
5 with respect to whatever the capped amount is, we would top
6 up that amount.

7 So, for instance, if the Swiss recovery is 60
8 cents, if the guarantee recovery --

9 THE COURT: Right.

10 MR. PEREZ: -- is 25 cents, so there would be an
11 additional 15 cents that we would have to top up, subject to
12 the caps.

13 And, in essence, you know, then we go through this
14 whole process, which is probably more than you want to know
15 of what's an authorized objection or not. But if they
16 settle greater than the amount of the cap during the various
17 time periods, we can object. And if we object and win, then
18 we're limited to the cap. If we object and lose, then it's
19 whatever cap is applicable at that time.

20 And, in essence, that's the way that we did it.

21 Your Honor, we have a declaration from Daniel
22 Irmin (ph) who has been intimately involved. He's probably
23 been --

24 THE COURT: Okay.

25 MR. PEREZ: -- to Switzerland, you know, ten or 15

1 times negotiating both with LBF. And so he's very much
2 involved. And, as I said, that declaration coupled with the
3 motion, which I believe is probably more extensive than we
4 would --

5 THE COURT: But very helpful, very helpful.

6 MR. PEREZ: -- than we would normally do.

7 So with that, Your Honor, we think it's a
8 tremendous benefit to the estate. And we believe that
9 unlocking that value is just key. And we're hoping to do it
10 very quickly so that we don't --

11 THE COURT: So the timing is such that if we enter
12 the order today, that's in time for the next distribution,
13 correct?

14 MR. PEREZ: Yes, Your Honor. The one variable and
15 -- which I need to alert the Court is that they're required
16 -- so if we enter the order today, the 19th is the last day
17 to appeal. So the 20th is the effective date. We will
18 notify them at 12:01 on the 29th --

19 THE COURT: Right.

20 MR. PEREZ: -- of the occurrence of the effective
21 date. They have till 9:30 in the morning to notify the
22 Swiss Administrative Court about that. And so the issue is
23 we think the Swiss Administrative Court will dispose of the
24 appeal at that point quickly, but --

25 THE COURT: I see.

1 MR. PEREZ: -- we don't -- we can't tell you with

2 --

3 THE COURT: Sure. Sure.

4 MR. PEREZ: We just don't control the court.

5 THE COURT: Okay.

6 MR. PEREZ: So that's -- that's the only little
7 wrinkle that we don't know exactly.

8 THE COURT: The -- in terms of the claims that
9 LBHI is getting back from LBF or getting assigned by LBF,
10 the -- one of the things that was unclear to me is to what
11 extent that that -- the notional amount of those claims is
12 effected by everything else that happens or is that notional
13 \$9.2 billion -- are those actually claims that we here are
14 going to have to resolve unless settled?

15 MR. PEREZ: No. Those claims have all been
16 settled.

17 THE COURT: They have?

18 MR. PEREZ: They have.

19 THE COURT: Okay.

20 MR. PEREZ: With the exception of Hong Kong.
21 That's why we have the indemnity claim.

22 THE COURT: Okay.

23 MR. PEREZ: Okay. Those claims have all been
24 settled by LBF. So, in essence -- so if you look at our
25 chart, Your Honor, we're, in essence, getting all of those

1 claims back with the largest ones being the LBT which is the
2 Dutch -- the Netherlands company --

3 THE COURT: Right.

4 MR. PEREZ: -- and LBS, which is the Netherlands
5 Antilles company. Those are the two largest claims of net
6 creditors to LBF --

7 THE COURT: Okay.

8 MR. PEREZ: -- that we will be getting back.

9 THE COURT: Okay.

10 MR. PEREZ: Hong Kong is the only one that's not
11 --

12 THE COURT: All right.

13 MR. PEREZ: -- resolved. And there may be smaller
14 ones, but of the bigs ones those are --

15 THE COURT: Okay.

16 MR. PEREZ: -- those are basically it.

17 THE COURT: All right.

18 There was also a statement of the ad hoc group
19 that was filed. Is someone here from Milbank who wishes to
20 speak?

21 MR. STODOLA: Yes, Your Honor.

22 Good afternoon, Eric Stodola from Milbank Tweed on
23 behalf of the ad hoc group of Lehman Brothers Creditors.

24 As an initial matter, my colleague, Mr. Yuzzi (ph)
25 wanted to apologize to you. He would have liked to have been

1 here himself, but --

2 THE COURT: I'm always happy to see Mr. Yuzzi, but
3 no apology is necessary.

4 MR. STODOLA: He had a personal commitment that
5 was scheduled before the hearing and he just couldn't get
6 out --

7 THE COURT: Okay.

8 MR. STODOLA: -- of it.

9 Nevertheless, he wanted me to come here and rise
10 to briefly -- just for two reasons. Notwithstanding that
11 the motion is uncontested, the first is, if Your Honor has
12 any questions for us on the pleading I'll do my best to
13 answer them.

14 THE COURT: I don't. Your pleading --

15 MR. STODOLA: Okay.

16 THE COURT: -- was -- I was happy to see it in two
17 respects:

18 One, it was helpful;

19 Two, it was brief.

20 MR. STODOLA: Okay. Well, that's the first issue.

21 And then, second, given that you just took over
22 the cases from Judge Peck we wanted to briefly introduce you
23 to the ad hoc group.

24 The plan was confirmed a little over two years ago
25 and we were a key participant in that plan process. It's a

1 little bit of an odd situation because typically an ad hoc
2 group will disband post-confirmation.

3 Here, I think you heard a few weeks ago from Mr.
4 Cantor that there are still significant assets --

5 THE COURT: Right.

6 MR. STODOLA: -- left to be disposed. There are
7 still significant claims and other issues to be dealt with.
8 And so for that reason the ad hoc group continues to keep
9 monitoring the cases and, where necessary, be in contact
10 with the debtors.

11 On that point we would like to thank the debtors
12 and their professionals. Whenever we've raised issues with
13 them or went to discuss something, they've always been quite
14 accommodating. So we're very thankful for that. We think
15 it's one of the reasons --

16 THE COURT: Well, it seems that it's a process
17 that's been working and continues to work, so --

18 MR. STODOLA: Right.

19 THE COURT: -- that's terrific.

20 MR. STODOLA: We think it's one of the reasons the
21 case has been so successful and hopefully will continue to
22 be.

23 There have been a very limited number of instances
24 where we felt the need to object to anything.

25 THE COURT: Okay.

1 MR. STODOLA: Here, we didn't do that. We filed a
2 statement in support. We filed this and others, I think, as
3 Your Honor noted just because we think it's helpful to the
4 Court to see that economic participants are watching and
5 supportive of what's going on.

6 And, you know, as to the merits of the motion I
7 don't want to take up the Court's time. I think you just
8 heard Mr. Perez and, you know, you read the pleadings.

9 THE COURT: I did.

10 MR. STODOLA: We think that the debtors are doing
11 exactly what they should be doing here and we're very
12 supportive of that. So --

13 THE COURT: Terrific. All right. Thank you. I
14 appreciate that.

15 Mr. Brilliant.

16 MR. BRILLIANT: Yes, Your Honor. And I'll be very
17 brief.

18 Good afternoon, Your Honor. Allan --

19 THE COURT: Good afternoon.

20 MR. BRILLIANT: For the record Allan Brilliant on
21 behalf of the Tschira entities.

22 Your Honor, I just wanted to point out this was a
23 very arm's length, hard fought, lengthy negotiation that
24 ultimately --

25 THE COURT: Well, I will tell you in all candor

1 that when I got a series of briefings from Judge Peck as I
2 prepared to take on the case this was a case that was -- had
3 a star next to it as something that was going to be very
4 difficult and very challenging.

5 So when the news came that it was settled, that
6 was a good thing.

7 MR. BRILLIANT: Yes. And, you know, and all the
8 parties, as you can tell from, you know, the settlement
9 agreement it's a very highly negotiated, you know, document.
10 You know, from our perspective we didn't get everything that
11 we would have gotten and we believe that claims should have
12 been paid, you know, in full in Switzerland, you know, to
13 LBF creditors. You know, the settlement that the debtors
14 and LBF agreed to didn't provide for that.

15 But with this settlement, although there's a risk
16 that we won't get, you know, ultimately paid in full on our
17 claim if our claim is allowed in Switzerland and even with,
18 you know, then new unsecured claim that's being reinstated
19 here --

20 THE COURT: Right.

21 MR. BRILLIANT: -- and the admin claim, we still
22 may not get paid in full, but, you know, this was something
23 that, you know, made sense to us and was good for all the --
24 you know, the parties in the case. And so we're glad we
25 were able to reach an agreement.

1 Your Honor, there are a couple of things that
2 weren't mentioned by Mr. Perez. I just wanted to point out
3 to the Court that I'm sure in reading the pleadings Your
4 Honor noticed there -- there are mutual releases in the
5 agreement. The releases that are being given by LBHI are
6 general releases for all the Tschira entities and the -- you
7 know, various affiliates and other parties. The releases
8 that we're giving to them are limited releases just in
9 connection, you know, with certain issues that were the
10 subject of these particular claims.

11 As part of the settlement agreement, the debtors
12 have agreed to dismiss the adversary complaint that they had
13 filed against the Tschira entities.

14 And as Mr. Perez very accurately talked about, you
15 know, the caps which were defined as the settlement amount,
16 you know, if it ultimately turns out that we have a large,
17 you know, reinstated claim, as Mr. Perez pointed out, that
18 really isn't any additional dollars. It's just the dollars
19 that are, you know, being advanced up front.

20 But if it turns out that we only have one dollar
21 of claims, we still get the \$12.5 million minimum amount of
22 the settlement amount. So it's not -- it's a sort of a
23 minimum that kind of goes with -- you know, goes --

24 THE COURT: Right.

25 MR. BRILLIANT: -- goes with the cap assuming that

1 we ultimately, you know, have at least one dollar of claims.

2 In addition to that, Your Honor, there's a
3 provision in the settlement agreement that the parties have
4 agreed to, you know, stay with respect to the adversary
5 until this goes effective to stay all of the -- you know,
6 the deadlines and various other things that go into the --
7 you know, the adversary.

8 And then we have had a conversation with LBF.
9 There's a disputed issue as to whether they have to provide
10 discovery to us in connection with the adversary, and we
11 have agreed, you know, that, you know, I guess they had a
12 date for filing, you know, a reply brief this week and we
13 told them that in light of the settlement that they should
14 hold off on that subject to seeing whether it goes
15 effective.

16 There are certain conditions to the agreement
17 going effective, you know, which, you know, in particular
18 that LBF, you know, not terminate their settlement agreement
19 prior to the effective date. And our expectation in hope is
20 that --

21 THE COURT: Fairly logical.

22 MR. BRILLIANT: Yeah. Right. You know, but we --
23 you know, obviously, you know, the expectation of all the
24 parties is that, you know, especially given that there's no
25 objection and --

1 THE COURT: Right.

2 MR. BRILLIANT: -- corporate notice went out, that
3 there won't be any appeals that -- you know, and if LBF
4 doesn't, you know, terminate it it will go effective, and --
5 assuming Your Honor approves it, of course --

6 THE COURT: Right.

7 MR. BRILLIANT: -- and the parties will get the
8 benefit of --

9 THE COURT: And the timing, as Mr. Perez pointed
10 out. The timing of the dismissal of the appeal doesn't
11 affect the settlement. It just -- that simply would affect
12 the timing for the distribution that LBHI would make.

13 MR. BRILLIANT: Right. If LBF doesn't terminate
14 the agreement prior to the effective date we will give the
15 notice -- effective with the time changes --

16 THE COURT: Right.

17 MR. BRILLIANT: You know, it's 9:30 in Switzerland
18 which is seven hours ahead of where we are here.

19 THE COURT: Got it.

20 MR. BRILLIANT: So --

21 THE COURT: Right.

22 MR. BRILLIANT: -- effectively 2:30 in the
23 morning, you know, New York time we'll get that notice and
24 hopefully, you know, the Swiss entities will move quickly
25 and monies will come in quickly. Obviously, that's

1 dependent upon the Swiss courts and, to some extent --

2 THE COURT: Right.

3 MR. BRILLIANT: -- LBF.

4 THE COURT: Okay. All right.

5 Does anyone else wish to be heard with respect to
6 the proposed settlement?

7 MR. PEREZ: Your Honor, just two things.

8 Number one, Mr. Tambe is here who represents LBHI
9 in connection with the adversary proceedings, so --

10 THE COURT: Okay.

11 MR. PEREZ: -- just in case the Court had any
12 questions and to the extent we -- we baked it into the
13 settlement agreement --

14 THE COURT: Right.

15 MR. PEREZ: -- it's a separate adversary.

16 And second, Your Honor, we do have -- we filed a
17 slightly revised form of order --

18 THE COURT: Okay.

19 MR. PEREZ: -- which did --

20 THE COURT: Should I take a look at that?

21 MR. PEREZ: -- three things.

22 (Pause)

23 MR. PEREZ: The first was we just -- and there's a
24 clean and then there's a redline which has in the back which
25 is in color.

1 THE COURT: Okay. I'm there.

2 MR. PEREZ: So on the second page those are just
3 the things that have happened subsequent: The show cause
4 order, the affidavit of service, the inclusion of Mr.
5 Irmin's affidavit as well as who we served, et cetera, and
6 the certificate of service.

7 But then on the last page Epiq is becoming very
8 precise in what they will do with the claims register.

9 THE COURT: Okay.

10 MR. PEREZ: So we have to have a basis to tell
11 them, you know, we've resolved this. Please reflect this as
12 being modified, paid, et cetera, et cetera.

13 THE COURT: Just not -- which is not atypical,
14 right?

15 MR. PEREZ: Which is not atypical. Usually, the
16 debtor has a little bit more flexibility than -- in most --

17 THE COURT: So now they want specific decrrial
18 language directing them to do --

19 MR. PEREZ: Exactly.

20 THE COURT: -- thus and such with the claims
21 register.

22 MR. PEREZ: Exactly. And so --

23 THE COURT: Okay.

24 MR. PEREZ: -- this is just both in connection
25 with the -- with this settlement and then to the extent that

1 the -- you know, once the LBF settlement goes effective,
2 it's with respect to the LBF settlement. And it's
3 permissive language that would allow us to do that in the
4 event that -- you know, that the conditions occur that would
5 happen.

6 THE COURT: So these last two decrial paragraphs
7 that are in the blackline, what's the -- the first one says
8 that to the extent that he effective date occurs --

9 MR. PEREZ: Right.

10 THE COURT: -- the claims agent is directed to
11 update.

12 MR. PEREZ: Right. So right now --

13 THE COURT: What's the difference between that and
14 the second one, which seems to be more precise, right? The
15 first one seems to allow for -- puts them burden on them to
16 determine that it's occurred as opposed to the second one
17 that says that the plan administrator notifies them.

18 MR. PEREZ: Right. And the reason is the first
19 one, we would have to instruct them because we don't know
20 how much the amount is and we don't know whether, in fact,
21 there will be one. But we want to have -- this is with
22 respect to -- let's assume that they settle for 150 Swiss
23 francs.

24 THE COURT: Right.

25 MR. PEREZ: Then we would have to tell them how

1 much to reinstate the guarantee claim for us at that time.

2 So that's why this one is more permissive.

3 The ones -- the one -- the --

4 THE COURT: But I guess what I'm saying is that
5 the -- in the second -- to the point that they want specific
6 instruction, what I'm focusing is on there is no parallel
7 language that says, to the extent that the effective date
8 occurs with respect to the settlement agreement, the claims
9 agent, upon notice from the plan administrator, is directed
10 to update.

11 In other words, it just says that they're directed
12 to update it in accordance with the settlement agreement.

13 The --

14 MR. PEREZ: Correct. And, Your Honor, just -- let
15 me just --

16 THE COURT: Go ahead.

17 MR. PEREZ: There's a reason for the madness,
18 okay?

19 THE COURT: Okay.

20 MR. PEREZ: Number two, these are the three claims
21 that are held by the -- by LBF. This --

22 THE COURT: Right.

23 MR. PEREZ: That are getting assigned to us.

24 THE COURT: Okay.

25 MR. PEREZ: So once they -- once it goes

1 effective, we know what they are. They're getting assigned
2 to us. The first one we don't know -- we can't tell them
3 today what the amount of the claim is. The amount of the
4 claim could be zero or the amount of the claim could be 150
5 or something less or 210 or something less or 300 or
6 something less. And we won't really know that until the
7 matter is resolved in Switzerland.

8 THE COURT: I -- I understand that. I guess what
9 I'm trying to say is that is the second paragraph intended
10 to provide more detail than the first paragraph or is -- are
11 these two different things?

12 MR. PEREZ: Two different things completely. The
13 first paragraph only deals with the claims by Tschira.

14 THE COURT: Right.

15 MR. PEREZ: The second paragraph deals with the
16 claims that LBF has asserted against the various entities
17 that are --

18 THE COURT: So --

19 MR. PEREZ: -- that will go -- that will be
20 assigned.

21 THE COURT: Right. Okay. I -- so I understand --
22 I understand that --

23 MR. PEREZ: Okay.

24 THE COURT: -- I believe. But I still -- I'm
25 stuck on the fact that when you start with the premise that

1 Epiq wants specific direction, the first decrial paragraph
2 does not do that. It does not have any notice being
3 provided to Epiq. It's -- in other words, if you're Epiq,
4 then you simply have to satisfy yourself that the effective
5 date -- and that's upper case effective date because it's
6 referring to the settlement agreement as opposed to the LBF
7 settlement, right?

8 MR. PEREZ: Right.

9 THE COURT: Okay. So to -- it's two different
10 things, but it would seem to me that the plan administrator
11 would still need to notify Epiq of the occurrence of the
12 effective date and that, therefore, Epiq would then be
13 directed to modify the claims register accordingly.

14 MR. PEREZ: Your Honor, that's easily solved by
15 just putting --

16 THE COURT: Right.

17 MR. PEREZ: -- upon notice from the plan
18 administrator.

19 THE COURT: Yeah. I mean, I don't -- I'm not
20 working for Epiq here.

21 MR. PEREZ: Yeah.

22 THE COURT: But there's a lack of --

23 MR. PEREZ: Absolutely.

24 THE COURT: -- parallelism in --

25 MR. PEREZ: Absolutely.

1 MR. BRILLIANT: Your Honor --

2 THE COURT: Does anyone else know what I'm talking
3 about?

4 MR. BRILLIANT: And I -- I understand exactly what
5 you were saying, Your Honor. The -- you know, the way the
6 settlement agreement works -- and I understand this -- we're
7 talking about a different issue, not how it works.

8 THE COURT: Right.

9 MR. BRILLIANT: But getting Epiq to do this is
10 that it's automatic, you know, without further order of the
11 Court. You know, the claims are automatically, you know,
12 allowed.

13 THE COURT: I understand -- right.

14 MR. BRILLIANT: So --

15 THE COURT: I understand that. But --

16 MR. BRILLIANT: So --

17 THE COURT: -- there's -- there still is a
18 document that Epiq has that has to be changed.

19 MR. BRILLIANT: Correct, Your Honor.

20 So what we would -- if it's okay with --

21 THE COURT: Sure.

22 MR. BRILLIANT: -- Your Honor now, this is
23 actually pretty simple here because when we get it, we're
24 going to get a certification from the -- from the plan
25 administrator of the fact that the effective date has

1 occurred. Given this two hour time difference we need
2 something to certify that so that we can go ahead and do
3 what we need to do in Switzerland, but overnight here.

4 So if we can, I think --

5 THE COURT: Now when you say -- I don't want to
6 make this more complicated. When you say effective date do
7 you mean effective date of the LBF settlement?

8 MR. BRILLIANT: No. We're talking-- we're not
9 talking about effective --

10 THE COURT: Effective date of this --

11 MR. BRILLIANT: It's of the Tschira LBHI
12 settlement, Your Honor.

13 THE COURT: This settlement. Right.

14 MR. BRILLIANT: Right.

15 THE COURT: Okay.

16 MR. BRILLIANT: So what I would propose is that
17 that the plan administrator -- that the order just say that
18 the plan administrator will send them a copy of the --

19 THE COURT: That's --

20 MR. BRILLIANT: -- new list --

21 THE COURT: That's all I'm trying to do.

22 MR. BRILLIANT: -- and then -- okay. And so --

23 THE COURT: Okay.

24 MR. BRILLIANT: Right.

25 THE COURT: All right.

1 MR. BRILLIANT: And then that's how they'll know.
2 So rather than change this language, you know, just say, you
3 know, just give them another thing that says that LBHI, you
4 know, will send -- will timely send notice of the, you know,
5 effective date, you know, to --

6 THE COURT: That's fine.

7 MR. PEREZ: Okay.

8 THE COURT: That's fine.

9 MR. PEREZ: We can do that. And I have a stick,
10 so if we can --

11 THE COURT: Yes.

12 MR. PEREZ: Could we just pencil it in and then --

13 THE COURT: That's fine. Okay.

14 All right. Anything else?

15 MR. PEREZ: Not for us. Not for us, Your Honor.

16 THE COURT: All right. Well, based on the
17 presentation and the papers and the clarifications and the
18 statements that were made in the court today it's clear that
19 the settlement satisfies the standards for a Rule 9019
20 settlement and I think I agree with the statement in the
21 papers filed by LBHI that it is actually beyond per
22 adventure (sic) that the settlement agreement is in the best
23 interest of LBHI and its creditors.

24 So we'll stand by to get the amended order and
25 we'll enter it as soon as we can take a look at it and

1 certainly by 5:00 today.

2 MR. PEREZ: Thank you, Your Honor.

3 THE COURT: All right. Thank you. Thank you all
4 for coming in.

5 MR. BRILLIANT: Thank you, Your Honor.

6 THE COURT: Is anyone here -- let me ask, is
7 anyone here for the 3:00 matters? I know that there was a
8 little bit of confusion about whether or not those matters
9 are going forward at 2:00 or 3:00?

10 MR. ROSSMAN: Yes, Your Honor. On behalf of
11 (indiscernible).

12 THE COURT: Okay. It looks like not everyone is
13 here, though, and I apologize for that. The discovery
14 matters had been scheduled for 3:00, but I think there was a
15 -- something lost in the translation when it migrated onto
16 the public calendar and came onto the public calendar as
17 2:00.

18 So we'll be back in 28 minutes. You can go get a
19 cup of coffee if you would like.

20 All right. Thank you.

21 (Recess at 2:32 p.m.; resumed at 3:02 p.m.)

22 THE COURT: Good afternoon.

23 Wow, we have quite a crowd.

24 Why don't you folks move -- move up a little bit
25 and let's try to figure out what makes the most sense in

1 terms of how we should handle this.

2 We have a court reporter. I'm going to just
3 address the group collectively, but you can each -- each
4 group of you can give different answers to the questions.

5 So the way that I'm thinking about it, there is a
6 unique -- there is one set of unique issues, I think, that
7 relates to Citi and KMPG. That's in one category. And then
8 in the other category, I think, are the issues that have
9 been raised by, I'll call the third party providers.

10 So I think it would make some sense for me to deal
11 with the Citibank KPMG issue first and then deal with the
12 third party providers second.

13 Who's -- who is here from Quinn Emanuel?

14 MR. ROSSMAN: That's fine. I am, Your Honor.
15 Andrew Rossman from Quinn Emanuel.

16 THE COURT: Okay, Mr. Rossman. Is that -- does
17 that make sense to you?

18 MR. ROSSMAN: Absolutely.

19 THE COURT: You're -- since you get to play in
20 every --

21 MR. ROSSMAN: I was going to suggest either --

22 THE COURT: -- every hand.

23 MR. ROSSMAN: -- either order you like.

24 THE COURT: Okay.

25 MR. ROSSMAN: But that that is the -- the KPMG

1 Citi issue is discreet from the others.

2 THE COURT: Right. Okay. And customarily I
3 conduct this type of conference off the record. It's in the
4 nature of a chambers conference because it's a discovery
5 conference.

6 Now that being said I have a reporter. If this is
7 the type of conference where we believe that no sooner do we
8 leave that everybody can't agree on what they agreed on,
9 then I'll have the recorder -- the reporter make a record.

10 If not, I'll cut the record and we can just do
11 this the way I would ordinarily do it. But I'm happy to
12 hear from you as to what you would prefer.

13 MR. ROSSMAN: Your Honor, I'm pleased to defer to
14 you on that. I hope we don't need a record. I --

15 THE COURT: I don't think we need a record. I
16 mean, this is the first time we're all getting together. In
17 the event that we have to come back on this, which I
18 certainly hope not, then we can go to record.

19 So I'm going to excuse the court reporter. I'm
20 sorry. Is there a dissenting view?

21 UNIDENTIFIED SPEAKER: No, not at all, just a -- a
22 procedural matter. I don't know if you needed it -- we're
23 going to do it informally -- but we filed a pro hac vice for
24 my colleague. So --

25 THE COURT: That's okay. Happy to have him.

1 UNIDENTIFIED SPEAKER: Okay.

2 THE COURT: But thank you for bringing that to my
3 attention.

4 All right. So we're going to go -- this will be
5 off the record.

6 (Whereupon, these proceedings concluded at 3:04 p.m.)
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I N D E X

RULINGS

DESCRIPTION

PAGE

LINE

DOC # 43309 Motion of Lehman Brothers

Holdings, Inc. Pursuant to Bankruptcy

Rule 9019 for Approval of Settlement

Agreement Resolving Claim of Dr. H.C.

Tschira Beteiligungs GmbH & Co KG and

Klaus Tschira Stiftung gGmbH

31

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Doc #43315 Order to Show Cause to Consider

Motion of Lehman Brothers Holdings, Inc.

Pursuant to Bankruptcy Rule 9019 for

Approval of Settlement Agreement Resolving

Claim of Dr. H.C. Tschira Beteiligungs

GmbH & Co. KG and Klaus Tschira Stiftung

gGmbH signed on 2/26/2014

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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri L
Breach

Digitally signed by Sherri L
Breach
DN: cn=Sherri L Breach, o, ou,
email=digital1@veritext.com,
c=US
Date: 2014.03.06 14:15:24 -05'00'

SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber

CERT*D-397

Veritext

330 Old Country Road

Suite 300

Mineola, New York 11501

Date: March 6, 2014